U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-S-Y-

DATE: OCT. 14, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a scholar in the field of African French language instruction, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition, concluding the Petitioner established his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner contends that the record demonstrates his eligibility for a national interest waiver. The Petitioner submits a supporting statement and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, and that his proposed work in the field of African French language instruction has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest waiver analysis, and (2) whether he demonstrated that his past record of achievement is sufficient to meet the third prong.

In a letter accompanying the Form I-140, Immigrant Petition for Alien Worker, the Petitioner explained that he is a "skilled scholar in the area of Francophone African Studies." The Petitioner attested that he has "interest in teaching foreign language to the military," and "has a technical knowledge in administrating the Interagency Language Roundtable (ILR), the Oral Proficiency Interview (OPI), and the Defense Language Proficiency Test (DLPT), tools to measure linguistic proficiency of employees." Regarding the national scope of the proposed work, the Petitioner stated: "My present and prospective employers are the and Whether it concerns the present or the future, my work as African French Language and Cultural Instructor or Bambara Linguist for the is national in scope."

In support of his petition, the Petitioner submitted a résumé, a Certificate of Appreciation from at for completion of the and a certificate stating that he participated in the in November 2008. He described his experience as a native speaker and instructor of both African French and Bambara. He explained that he designs "web-based and instructor-led French language training materials for the The materials are based on Francophone African culture and African French language." He indicated that has held the position of "Bambara Linguist," and that "Bambara is a language widely spoken in West Africa, particularly in French-speaking countries." The Petitioner stated:

> I participate in a Defense Language Institute project to build a machine translation of Bambara into English . . . I brought my contribution to the for the project, a language learning support system with interactive materials, designed for government agencies.

The Petitioner provided samples of job postings to demonstrate the types of positions that he is pursuing. The postings included those for teaching positions at the and the at the He also submitted a job offer from offering him a part-time position as a subject matter expert for the distance learning products. The record also includes a copy of an independent contractor agreement between the Petitioner and for a position reviewing Bambara lexicon. The contract ran for the period October 14, 2014, until November 30, 2014. Finally, the Petitioner presented evidence

that he has published six papers at national conferences that examined the role of African cinema in foreign language instruction.

In denying the Form I-140, the Director found that the Petitioner had not shown that the benefits of the proposed work would be national in scope as required under the second prong of the *NYSDOT* analysis, or that the he had achieved a degree of influence on the field as a whole under *NYSDOT*'s third prong. The Director concluded that the Petitioner did not submit evidence that his work as a teacher of FrancoAfrican language would bring benefits to the nation as a whole.

On appeal, the Petitioner provides a letter from program manager, verifying the Petitioner's employment since November 2014 as a subject matter expert assigned to a government contract which supports and an additional copy of his résumé.

A. National Scope

The Petitioner has not submitted evidence that his work will be national in scope. The documentation does not establish that his position as a subject matter expert for the distance learning products will be disseminated nationally or that it would offer national benefits. While the Petitioner contends that products are utilized by the he does explain how the military uses his work. The Petitioner has not shown that a language training course that instructs a limited pool of students produces benefits at a level that is national in scope, even if the students are personnel. Merely participating in a project or contract that is requisitioned by the federal government is not sufficient to establish a national benefit. The Petitioner must demonstrate that his particular contribution will be implemented nationally or, in this case, that his work significantly impacts or influences the work of the Accordingly, we agree with the Director's determination that the Petitioner does not meet the second prong of the *NYSDOT* national interest analysis.

B. Influence on the Field

We find that the Petitioner did not demonstrate sufficient influence on his field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

The record reflects that the Petitioner has participated in workshops and projects designed to create "web-based and instructor-led French language training materials," and that he has taught college-level French at several universities. However, he has not made clear how his work has impacted the field as a whole. For example, while he states that he "contributed to the for the project, a language learning support system with interactive materials, designed for government agencies," he has not provided evidence of the project or his

specific role in it. The evidence of record does not document how the Petitioner's work affected the [redacted] training its personnel in language skills or otherwise impacted the field of language training. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The submitted documentation about the Petitioner's workshops and projects does not specify the role he played or the exact nature of his contribution. Furthermore, the record does not include evidence demonstrating that any materials he developed or contributed to have been widely disseminated or implemented by the [redacted] or have otherwise affected the field as a whole.

The Petitioner stated that his background, skills, and experience make him especially well qualified for the position relative to other workers. Any statement that a petitioner possesses useful skills or experience, however, relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that the benefits of the proposed work are national in scope or that he has a past record of demonstrable achievement with some degree of influence on the field as a whole. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S-Y-*, ID# 9758 (AAO Oct. 14, 2016)